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MONTANA PROSECUTOR

JANUARY - APRIL/1982 VOL. 6, NO. 1

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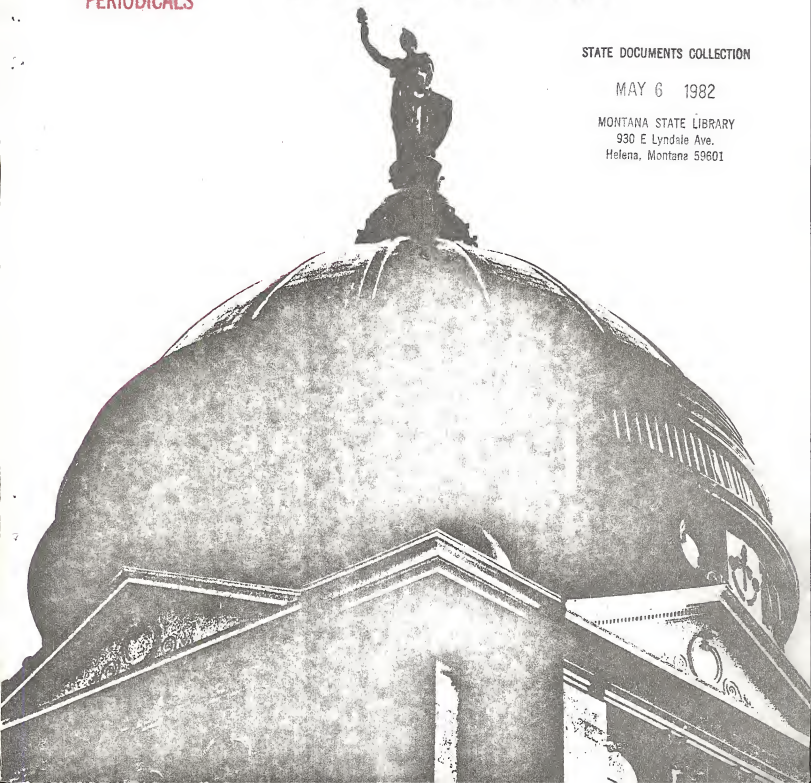

INTRODUCTORY NOTES

UNIDENTIFIED DEAD/MISSING PERSONS FILE - Included with this issue, and for your information, is a copy of the February, 1982 Division of Forensic Science Newsletter which makes reference to the Unidentified Dead/Missing Persons file maintained by the Colorado Bureau of Investigation. It is available for use by all Montana law enforcement agencies.

NDAA DIRECTOR'S REPORT - Missoula County Attorney Robert L. Deschamps' reports on the NDAA Board meetings of November, 1981 and March, 1982 are in this issue. Unfortunately his earliest report was not included in the last issue of the Montana Prosecutor as it should have been.

BOARD OF MEDICAL EXAMINERS - A letter from the Board of Medical Examiners to the Attorney General concerning the unlicensed practice of midwifery is included herein at the request of the Attorney General for your information.

NCDA PROGRAMS - A master calendar of training programs for prosecutors is attached.

DWI MEMO - Your attention is directed to the enclosed memorandum concerning the dismissal of a third DWI charge because of a denial of counsel during prosecution of the second DWI offense.

SUMMER CONFERENCE - The annual summer convention of the MCAA will be at Fairmont Hot Springs on July 21,22,23 and 24, 1982. Judge Charles E. Moylan will present a session on confessions, identification and trial techniques in addition to other exciting programs. As the details are firmed up by the Convention Chairman, Ron Smith, you will be notified.

RECENT CASES AND NOTES

FORFEITURES - NOTICE

The prosecutor did not give defendant sufficient notice of the forfeiture procedure by sending notice to a Mexican address contained in the police reports since a bail form in the related criminal proceeding indicated that defendant had a California address. The applicable statute requires that the prosecutor exercise "due diligence" in checking related criminal proceeding files; this is not unduly burdensome. Matter of 1977 Mercury Coupe, etc., (Ariz.) 631 P.2d 533.

ARGUMENT

The prosecutor did not violate defendant's constitutional rights, including his right to present evidence when he asked the jury where the alibi witnesses were whom defendant said could substantiate his story. State v. Daniels (Conn.) 429 A.2d 813.

CONFLICT OF INTEREST - PROSECUTORS

The fact that the prosecutor represented appellant in an unrelated case two years earlier did not constitute plain error. Green v. State (Md.App.) 430 A.2d 1122.

CONFRONTATION - WITNESSES

No error or violation of defendant's Sixth Amendment right to confront his accuser where State did not inform defendant that they decided not to call one of the victims to testify. The Sixth Amendment confrontation right "extends only to witnesses whose testimony is presented." Commonwealth v. Allen (Pa.Super.) 429 A.2d 1113.

DEADLY WEAPONS - BOOTS

The rubber boots which defendant wore to kick and stomp on his victim's face could be classified as dangerous instruments under the New York assault statute. People v. Carter (NY) 423 N.E.2d 30.

DOUBLE JEOPARDY - SENTENCES

Defendant's five aggravated kidnapping convictions for taking five people hostage do not violate double jeopardy. A defendant who threatens harm to more than one person deserves greater punishment than a defendant who threatens harm to only one person...a single criminal act or episode may constitute as many offenses as there are victims." State v. James (Utah) 631 P.2d 854.

EXPERTS - BATTERED WIFE SYNDROME

It was not error for the trial court to exclude the defense's offered expert testimony on "battered wife syndrome" in defendant's trial for the murder of her common-law husband. Inter alia, "the 'battered wife syndrome' is not sufficiently developed, as a matter of commonly accepted scientific knowledge, to warrant testimony under the guise of expertise." State v. Thomas (Ohio) 423 N.E.2d 137.

VOICE IDENTIFICATION

The circumstances surrounding the victim's identification of defendant's voice were not unnecessarily suggestive so as to deny defendant's due process right where, since the victim was unable to identify her attacker from two photo line-ups or recognize him at a neighborhood bar, the police had her telephone the bar and ask for defendant by name. The victim recognized defendant's voice as that of her attacker; it was the voice of the same person who called her three times after the attack and identified himself as the rapist. Chambers v. State (Ind.) 422 N.E.2d 1198.

PRIOR BAD ACTS - ACQUITTAL

Reversal of appellant's child molestation conviction was not necessary, even though the trial court admitted evidence of a second molestation to prove intent and even though appellant was later acquitted of that second molestation charge. "The admissibility of evidence must be determined at the time of trial, and not at some indefinite time after words." State v. Miller (Ariz.) 632 P.2d 552.

BRUTON - CONSPIRACY

Statements made by the wife-codefendant, which implicated the husband-codefendant in the murder-for-hire plot, were admissible as conspiracy exceptions to the hearsay rule and did not violate the husband's Bruton rights. State v. Kern (Iowa) 307 N.W.2d 22.

CONTEMPT - IDENTIFICATIONS

Defense attorney obstructed justice by substituting someone for defendant at the counsel table at trial with neither notice nor court consent and when identification was not at issue. United States v. Thoreen (9th Cir.) 653 F.2d 1332.

COUNSEL - SUBPOENAS

It was not unethical for the prosecutor to prove defendant's prior conviction by subpoenaing an attorney who formerly represented defendant, so the trial court committed error when it quashed the subpoena on these grounds. Marquez v. Charnes (Colo.App.) 632 P.2d 641.

DISCOVERY - PROSECUTOR MISCONDUCT

The prosecutor reasonably concluded that the results of neutron activation and fingerprint tests were inconclusive and thus inconsequential to either the prosecution or the defense in a homicide trial since shortly after her arrest defendant admitted that she shot the victim. Therefore, failure to disclose the test results until trial was not deliberate bad-faith prosecutorial misconduct but was 'no more than prosecutorial error of the sort which occurs from time to time as an inevitable part of the adjudicative process." Commonwealth v. McElligott (Pa.) 432 A.2d 587.

ESCAPE - ARREST

Defendant could be convicted of escape from official detention since the officer told defendant that he was under arrest for a felony even though the officer had not hand-cuffed defendant or placed him in the patrol car to take him to the station. "An arrestee has a legal obligation to surrender himself to an officer who has properly identified himself and has announced the arrest." State v. White (Neb.) 306 N.W.2d 906.

EXPERTS - WITNESSES

Citing an Arizona Supreme Court opinion, the Wyoming Supreme Court agrees that lay witnesses with special training may testify as expert witnesses under Rule 702. Here, the witness's lack of a specialized degree in the area of ballistics went to the weight of his testimony, not its admissibility. McDaniel v. State (Wyo.) 632 P.2d 534.

LESSER INCLUDED OFFENSES

Defendant committed two distinct acts when he applied a knife to the victim's throat cutting him once, removed the knife to threaten another victim, re-applied it and gave "a pretty hefty yank." Thus, defendant could be convicted of both attempted murder and armed violence. People v. Myers (Ill.) 422 N.E.2d 621.

MOTIVE - INTENT

The trial court properly admitted evidence that defendant increased his insurance coverage from $25,000 to $45,000 to prove motive to commit the arson. People v. Elkhatib (Colo.) 632 P.2d 275.

PRIVILEGES - NEWSPAPERS

A reporter has to reveal his confidential sources in a civil case in Gagnon v. District Court (Colo.) 632 P.2d 567.

SEARCH AND SEIZURE

While responding to a call about a suspected thief, an officer saw the suspect observe them from the door of his motel unit; then, through a crack in the room's curtains, he saw another person cutting heroin. There was no search since the officer was on the sidewalk leading to the motel unit and the officers had nothing to do with the gap in the curtains. The heroin observation constituted probable cause to search and, since defendants observed officers approaching the motel room, the officers were justified in entering immediately to prevent evidence destruction. People v. Gomez (Colo.) 632 P.2d 586.

SEARCH AND SEIZURE - CONSENT

Where defendant's employer consented to a search of the office that defendant shared with other people, he had no reasonable expectation of privacy in the office. Evidence found in a file cabinet in the office could not be suppressed simply because the officers did not have a search warrant. People v. Crawford (Colo. App.) 632 P.2d 626.

TRAFFIC OFFENSES - DWI

Despite the fact that the police officer did not actually see the defendant driving the truck found at the scene of the accident, the State could still prosecute the defendant for driving under the influence since defendant admitted that he operated the truck. Commonwealth v. Slout (Pa.Super.) 432 A.2d 609.

WITNESSES - PSYCHIATRIC TREATMENT

The trial court correctly barred defense council cross-examination about whether a witness had ever undergone psychiatric treatment. People v. Stinson (Colo.App.) 632 P.2d 631.

Drawing by Modell; '1976 The New Yorker Magazine, Inc.

"If it please the Court, my client would like to let it be known he has already learned his lesson and is very, very sorry indeed."

RIGHT TO COUNSEL - INADEQUATE OR INEFFECTIVE COUNSEL - REQUIRING COUNSEL TO TESTIFY FOR PROSECUTION

In the case of first impression involving the propriety of requiring defense counsel to testify for the prosecution, the Oregon Court of Appeals states that "a defendant's right to effective representation may be impaired while his counsel is on the witness stand for the prosecution, because; (1) it is impossible for the defendant to consult with his attorney; (2) the defendant cannot call attention to any inaccuracy in the attorney's testimony or suggest proper questions for cross-examination; (3) it is difficult, to say the least, for the lawyer, as a witness, to determine what objections should be made to questions asked him; (4) it is difficult for the lawyer to determine what questions to ask himself on cross-examination, and if he attempts to cross-examine himself the proceedings may take on a ludicrous appearance, and (5) it is difficult for the lawyer to answer questions so as not to antagonize the jury and still maintain a favorable impression." The Court added to that list of problems the fact that here defendant was left with an attorney who was put in the position or arguing to the jury that defendant had a valid alibi defense, but who had testified for the State that a principal alibi witness's testimony was not very convincing. "From defendant's standpoint, that position at best was tenuous if not untenable. To say, as some courts have said, that requiring defense counsel to be a witness for the prosecution and at the same time to be sole counsel for the defendant should be avoided whenever possible, is a substantial understatement." State v. Thomas, 632 P.2d 30, (Ore.App. 1981).

TRIAL JUDGE - ORDERING POLYGRAPH EXAMINATION OF PROSECUTION WITNESS - VIOLATION OF SEPARATION OF POWERS DOCTRINE

When a trial judge ordered a prosecutor to administer a polygraph examination to a key prosecution witness, he violated the vital separation of powers doctrine. A prosecutor enjoys broad discretion in bringing charges and evaluating the reliability and credibility of his witness, and such discretion should not be invaded by the trial judge. "The district attorney's broad discretion in determining whether a charge shall be filed involves the primary determination of whether the evidence of the crime is sufficient to warrant the filing of the charge. This obviously depends upon his evaluation of the reliability and credibility of the witnesses to the crime, including the complaining witness or victim of the crime. Whether this evidence shall be tested by ordinary means of interrogation or by other means, such as requiring a potential witness to submit to a polygraph examination, is a matter of prosecutorial discretion. This function is not subject to judicial control or discretion. To hold that the exercise of such prosecutorial discretion is subject to judicial oversight would erode the doctrine of separation of powers in violation of Article III of the Colorado Constitution." People v. District Court, ___P.2d ___, (Colo., 8-31-81).

EXCLUSIONARY RULE - WELFARE AGENCY'S DISCLOSURE OF CONFIDENTIAL INFORMATION TO PROSECUTOR

No due process violation was found in the actions of a welfare agency which turned over to the prosecutor information obtained from recipients under a promise of confidentiality. In an effort to detect abuse, the welfare agency asked some recipients to sign a release form allowing their employers to turn over their earnings records. The agency promised confidentiality, but when some of the records revealed fraud, the agency turned the information over for prosecution. Concluding that this act did not violate any right to privacy, and examining other due process cases such as Rochin v. California, 342 U.S. 165 (1952), the Supreme Court of Ohio held that "[t]he release of an employee earning information form which develops and reveals the truth about the eligibility of a recipient for public assistance and the information elicited by the county welfare department as a result thereof, do not offend our conception of justice and sense of fair play." State v. Yates, 421 N.E.2d 855, (Ohio, 1981).

PROSECUTING ATTORNEY - DISQUALIFICATION OF ENTIRE OFFICE BECAUSE OF ASSISTANT'S PRIOR REPRESENTATION OF DEFENDANT

An entire federal prosecutor's office was not disqualified from reprosecuting a fraud defendant simply because one of the office's new recruits represented the defendant during his first trial. Nothing indicated that the former defense attorney's presence in the prosecutor's office in any way prejudiced the defendant. The trial court, although recognizing that no real prejudice had occurred, concluded that the "appearance of impropriety" required the prosecutor's office to step down. In reversing this decision, the Sixth Circuit Court of Appeals stressed that the lawyer in question was not assigned to the defendant's prosecution and had been instructed not to discuss the case with either the lawyer who was so assigned or any other attorney in the office. Under these circumstances, disqualification of an entire government department was inappropriate. The Court cited Formal Opinion 342 of the ABA Committee on Professional Ethics, reported at 62 ABA Journal 517 (1976), in reaching its conclusion. U.S. v. Caggiano, 660 F.2d 184, 6th Cir., 1981).

CONSENT - VOLUNTARINESS - CHILDREN

The Alaska Supreme Court has upheld a child's consent to an entry by police officers who wished to speak with his father concerning a minor traffic accident. The Court notes that there is no special rule that applies to third-party consents by a child. The State has the burden of establishing by clear and convincing evidence that there was a valid consent given for the search. Such consent must be voluntary, unequivocal, specific, and intelligently given. Since the child in the instant case was between 11 and 14, he could be expected to exercise at lease minimal discretion. The nature of his consent was limited in scope to permitting the troopers into the living room to talk to his father. The evidence indicated that the consent given was voluntary and was within the scope of his authority as an occupant of the dwelling. Doyle v. State, 633 P.2d 306, (Ala, 1981).

BOOKING SEARCH - CLOSED CONTAINERS FOUND ON PERSON

The Supreme Court of Oregon has held that closed containers found on a recently arrested individual during the booking process may be searched without a warrant. The Court resolved any conflict between the warrant requirement for containers, first recognized in U.S. v. Chadwick, 433 U.S. 1 (1977) and the more traditional search-incident-to-arrest doctrine, in favor of the latter doctrine. It relied primarily on U.S. v. Edwards, 415 U.S. 800 (1974) in which the Supreme Court used the search-incident doctrine to uphold the warrantless seizure of clothing from a jail inmate who had been arrested 10 hours earlier. The Oregon Court noted that Chadwick and its progeny made no attempt to limit that holding. Edwards and other search-incident cases involve only the "search of the person," while the Chadwick line of cases is concerned with the "search of property." For purposes of a search incident to arrest, "the person" includes clothing and "small closed containers like cigarette boxes and wallets." State v. Brown, 634 P.2d 212, (Ore. 1981).

MIRANDA - INTERROGATION - REMARKS TO DEFENDANT DURING BOOKING

While booking a burglary suspect, a deputy sheriff suddenly turned to him and said: "I'm going to level with you. I'm going to tell you exactly what the other defendant *** told me," and then proceeded to do so. This was held to be interrogation under the rule of Rhode Island v. Innis, 446 U.S. 291 (1980). The Court concluded that "[c]learly, appellant was not subjected to express questioning by Deputy Sides. The issue is whether Deputy Sides should have known that his remarks were reasonably likely to elicit an incriminating response. *** In applying the Innis test to the facts of the instant case, we have concluded that Deputy Sides, regardless of his underlying intent, should have known that his remarks to appellant were reasonably likely to elicit an incriminating reponse. Thus, the admission of the inculpatory statements were in violation of the principles of Miranda and Innis." Tierney v. State, 404 So.2d 206, (Fla. App., 1981).

WARRANTLESS ARREST - EXIGENT CIRCUMSTANCES - RE-ENTRY OF PREMISES

Where police officers consummated a cocaine sale in the seller's home and then left briefly to rendezvous with other agents, they acted properly in reentering the defendant's home without a warrant to make the arrest. "At the point in time prior to exiting the defendant's home, when [the police officers] could first have arrested defendant and his colleagues, they were outnumbered; at least one of the prospective arrestees was armed and at least two were believed to be heavy drug dealers and dangerous. Under these circumstances we do not consider this arrest routine nor the agents' action in withdrawing to obtain assistance to effect the arrests in question unreasonable ***." People v. Simon, 427 N.E.2d 843, (Ill.App., 1981).

STOP AND FRISK - DRUG COURIER PROFILES - CONSENT

A drug suspect was not "seized" when he was approached by a police officer in an airport and requested to accompany the officer to a basement room for questioning. Even though the officer stopped the defendant because he fit a drug courier profile, he did nothing that restrained the suspect's freedom of movement, and therefore, the initial encounter did not trigger Fourth Amendment safeguards. In addition, the defendant consented to the officer's request that he accompany him. The Court, however, rejected the State's argument that because defendant fit the drug courier profile a brief investigatory detention was justified. The Court took the position that such fact, without more, did not give rise to a reasonable suspicion of wrongdoing. The defendant consented to a search of his luggage, which led to the discovery of drugs, when he told the officer to "go ahead and search the suitcase if you wish." State v. Grimmett, 284 S.E.2d 144, (N.C. App, 1981).

MIRANDA - INTERROGATION - PLACING SUSPECTS TOGETHER IN POLICE CAR

Placing two robbery suspects in the back seat of a police car, which police hoped would cause them to make incriminating responses to one another and a tape recorder hidden in the front seat, did not constitute "interrogation" within the meaning of Rhode Island v. Innis, supra. Under Innis, whether a particular police practice constitutes "interrogation" depends "'upon the perceptions of the suspect rather than the intent of the police.'" Although the suspects' incriminating statements involved "some police orchestration," they were "hardly police imposed." The Court takes the reasonable view that the "passive techniques" of putting two suspects together "does not rise to the level of police action which calls for a response." People v. Crowson, 177 Cal. Rptr. 352, (Cal.App., 1981).

MIRANDA - APPLICABILITY TO TRAFFIC STOPS

Miranda warnings were not necessary where a police officer observed a suspicious bottle of pills during a routine traffic stop and asked the driver about it. Although expressing a certain uneasiness about the rule, the instant Court noted that courts in this State have repeatedly held that traffic stops are not custodial for Miranda purposes since they lack most of the elements Miranda was designed to counter. People v. Montoya, 178 Cal. Rptr. 211, (Cal.App., 1981).

NARCOTICS - CLASSIFICATIONS - COCAINE - CONSTITUTIONALITY

The Illinois High Court holds that notwithstanding cocaine is not classified as a narcotic by the medical community, there are valid legislative reasons for scheduling cocaine with narcotics for sentencing purposes. People v. McCarty, 86 Ill.2d 247, 427 N.E.2d 147, (Ill., 1981).

WITNESS - HYPNOTICALLY REFRESHED TESTIMONY - ADMISSIBILITY

The Supreme Court of Pennsylvania declines to join those jurisdictions that have held that the testimony of a witness who has undergone hypnosis to refresh his memory may be admitted at a criminal trial. The Pennsylvania Court believes that such evidence has not been generally accepted in the relevant scientific community as reliable. While in a hypnotic state, the subject has a reduced perception of reality, an alteration in consciousness and a heightened sense of suggestibility, factors that can render his refreshed memory unreliable. Other jurisdictions have allowed the introduction of hypnotically refreshed testimony on the ground that the trier of fact can resolve the problems of reliability the same way it does for other evidence, but this Court finds such approach unacceptable. Commonwealth v. Nazarovitch, 436 A.2d 170, (Pa., 1981).

Drawing by Maslin; 1981
The New Yorker Magazine, Inc.

"And now I'd like to bring on a brand-new witness, with the brightest testimony you're likely to hear for quite some time. She's never been on the stand before, so let's give her a big, warm welcome."

STATE
OF
MONTANA
DIVISION OF FORENSIC SCIENCE
DEPARTMENT OF JUSTICE
275 West Front Street, Missoula, MT 59802 (406) 728-4970

Ronald L. Rivers, M.D.
State Medical Examiner

Arnold B. Melnikoff
Laboratory Bureau Chief

Dawn M. Kangas
Administrative Assistant

RECEIVED
JAN 25 1982
LAW ENFORCEMENT
SERVICES

FEBRUARY 1982

UNIDENTIFIED DEAD/MISSING PERSON REPORTS

We are joining the Colorado Bureau of Investigations system for handling unidentified dead. There is no cost to us except postage or use of NLETS. All the information is enclosed.

SEROLOGY

We have received a number of inquiries concerning methods to send blood so that it will not freeze in our winter weather. Although it is important that the blood not freeze, blood will not normally freeze in the mail if placed in a mailer with paper or other insulation around the tubes. Styrofoam containers are not necessary, but do provide good insulation. Mailing samples in the first part of the week so they won't sit over the weekend may also be useful. Use red tops for typing and grey tops for blood alcohol or drugs.

EBRUARY 1982

ON CALL SCHEDULE - MONTANA STATE MEDICAL EXAMINER

275 W. Front Street
Missoula, Montana 59802

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
	1	2	3	4	5	6 RON RIVERS
7 RON RIVERS	8	9	10	11	12	13 JOHN PFAFF
14 JOHN PFAFF	15	16	17	18	19	20 RON RIVERS
21 RON RIVERS	22	23	24	25	26	27 JOHN PFAFF
28 JOHN PFAFF						

Telephone Numbers: State Office - 728-4970
WATS Line - 243-5796

Home Phone: Dr. Ron Rivers- 728-2033 (Home)
(week nights call unless otherwise indicated)

Dr. John Pfaff - Great Falls
Hospital - 727-3333
Home - 727-3905

Dr. Ken Mueller- Billings
Hospital - 657-7000
Home - 248-3025

February 1982
CHILD ABUSE
R. L. Rivers, M.D.

A two-year old child was last seen alive by the mother at 9:36 a.m. He was found unresponsive shortly after 12:30 p.m. He was taken to a hospital where he was DOA at 1:03 p.m. He had been seen in the emergency room the day before with a diagnosis of tonsillitis.

The hospital called the sheriff because of multiple bruises over the face. The mother's boyfriend stated that the child had been running and fell over a rock.

QUESTIONS:

1) What should the sheriff do first when presented with a suspected battered child death?

2) What findings would be seen at the autopsy?

3) What other important information should be obtained by the sheriff?

4) What additional procedures might the pathologist request?

ANSWERS

1. After the coroner has been notified it should be immediately reported to the Division of Forensic Science. This enables the investigator to discuss the case with the forensic pathologist on call. These are difficult cases to prosecute and must be investigated thoroughly and carefully. Total body X-rays and extensive photography of all the injuries are crucial.

2. In cases of child abuse the autopsy typically reveals evidence of old and recent injuries. Stories regarding recent "falls" do not explain the old injuries. The injury that caused the death, usually a skull fracture or rupture in the abdomen, is inconsistent with the "accident". Frequently the suspect will change the story or confess when told his lie doesn't hold water with the autopsy findings. Old rib fractures or healing fractures of the arms and legs seen on the X-rays will tell the brutal treatment the child had received in the past.

3. Besides the interviews with the parents and/or the paramours, the investigator would be wise to talk to the siblings, babysitters, neighbors and pediatrician if there is one. Note the orderliness of the home and inform the autopsy surgeon if CPR was given.

4. Microscopic sections of the bruises or any burns will document repeated episodes of injury at different times. Bone marrow should be examined for evidence of any blood diseases. Examine the inside of the mouth, anus, and vagina for injuries. Of course do a complete rape examination if the case appears sex related.

   A blood sample is vital for comparison with blood stains on the assailant or at the scene.

   Extra blood and urine may be analyzed for drugs or poison. The vitreous may be analyzed for electrolytes in cases of child neglect with dehydration.

NOTE: The successful prosecution of an abuser may save another innocent child's life. Many cases have been uncovered that involved more than one child in the family. Unfortunately it was only after the second child's death that a pattern of abuse was discovered.

Richard D. Lamm, Governor

Department of Local Affairs
Colorado Bureau of Investigation

John R. Enright, Director

December 2, 1981

Dr. Ron Rivers, M.D.
275 West Front Street
Missoula, Montana 95802

Unknown Dead/Missing Person

Dear Dr. Rivers:

Enclosed is a copy of our Unidentified/Missing Person Report. Please use it for reporting to our Computerized Dead File or send the same information via NLETS to ORI/COCBI0000.

Please let us know if we can assist further in this matter.

Sincerely,

John R. Enright
Director

By
W. Gray Buckley
Agent in Charge
Crime Information Section

2002 South Colorado Boulevard, Denver, Colorado 80222 (303) 759-1100
P.O. Box 790, Montrose, Colorado 81401 (303) 249-8621
3416 N. Elizabeth Street, Pueblo, Colorado 81008 (303) 542-1133

UNIDENTIFIED DEAD FILE

BACKGROUND

The materials attached give a brief functional description of the Unidentified Dead File maintained by the Colorado Bureau of Investigation (CBI). It is our hope that once the need for and economy of the file is demonstrated, a national agency could add such a file to its on-line services.

The CBI developed this file first to minimize its work in checking the many weekly teletype inquiries concerning missing persons and/or unidentified dead. Second, we wanted to be better prepared to handle mass fatalities involving unidentified dead. The State Emergency Preparedness Plan obligates the CBI to coordinate identification of unidentified dead, together with related communications duties.

We have drawn on resources of the IAI, the USAF, and Colorado State University, the FBI, and our own staff in designing our own reporting form, the dental charting procedure, and our computerized file system. We have automated basic identification data, and are prepared to do the same with the dental information.

Our system, not unlike NCIC, is dependent on two phases of user participation. First, the reference information (reports of unidentified dead) must be filed. Second, investigators need to check their missing person reports against the file. The CBI file function is to point the inquirer to the law enforcement agency with information that might be helpful.

You may already realize:

1. Many missing person reports are delayed until months or years after the corpse in question has been recovered.

2. Efforts to link unidentified dead with missing person reports are minimal.

3. Most unidentified human remains are in good condition (recent death) and are easily described in standard police terminology.

We concluded the cost of our own file system would be minimal; our work would be reduced as a result of it; and our service to law enforcement in this area would be improved markedly.

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Unidentified Dead/Missing Person Report

☐ Unidentified Dead(UID) ☐ Missing Person(MNP) Reporting Agency_____ Case Number_____

Name_____ Address/Location_____

AKA_____ Occupation_____ Employer_____

SOC_____ LIC_____ LIS_____ OLN_____ OLS_____ POB_____

MNUs_____ Estimated Time of Death_____

Reporting Party_____ Address_____ Phone_____

Clothing(Describe In Detail)_____

Rings(RIN)
☐ Gold Band(1)
☐ Silver Band(2)
☐ Diamond(3)
☐ Turquoise(4)
☐ Class(5)
Other(6)_____

Other Personal Items(OPI)_____

Physician	Dentist
Name_____	Name_____
Address_____	Address_____
Phone_____	Phone_____

Fingerprint Class(NCIC)
☐ (Attach prints)

Age/Date of Birth(DOB)
☐ Infant(1)
☐ Young Child(2)
☐ 10-13(3)
☐ 14-17(4)
☐ 18-25(5)
☐ 26-35(6)
☐ 36-45(7)
☐ 46-55(8)
☐ 56-Over(9)
Exact DOB(10)_____

Sex(SEX)
☐ Male(1)
☐ Female(2)
☐ Unknown(3)

Race(RAC)
☐ Caucasian(1)
☐ Negroid
☐ Chicano(3)
☐ Indian(Amer)(4)
☐ Chinese(5)
☐ Japanese(6)
Other(7)_____

Height(HGT)
☐ Small Child(1)
Very Short(503-Under)(2)
☐ Short(504-506)(3)
☐ Medium(507-509)(4)
☐ Tall(510-601)(5)
☐ Very Tall(602-Over)(6)
Exact Height(7)_____

Weight(WGT)
☐ Very Thin(1)
☐ Thin(2)
☐ Medium(3)
☐ Muscular(4)
☐ Heavy/Stock(5)
☐ Obese(6)
Exact Weight(7)_____
Approx Weight(8)_____

Complexion(SKN)
☐ Albino(1) ☐ Sallow(8)
☐ Black(2) ☐ Yellow(9)
☐ Dark(3) ☐ Ruddy(10)
☐ Medium(4)
☐ Light(5)
☐ Fair(6)
☐ Olive(7)

Nose(NOS)
☐ Crooked(1)
☐ Hooked(2)
☐ Upturned(3)
☐ Long(4)
☐ Broad(5)
☐ Flat(6)
☐ Small(7)
☐ Thin(8)
☐ Discolor(9)
☐ Mole(10)
☐ Scar(11)
☐ Tattoo(12)
Tattoo Type(13)_____

Eyes
Color(EYE)
☐ Brown(1)
☐ Blue(2)
☐ Hazel(3)
☐ Black(4)
☐ Green(5)
☐ Gray(6)
☐ Maroon(7)
☐ Pink(8)
Other(9)_____

Other Features (EYS)
☐ Missing Left(1)
☐ Missing Right(2)
☐ Cataract Left(3)
☐ Cataract Right(4)
☐ False Left(5)
☐ False Right(6)
☐ Mole Left(7)
☐ Mole Right(8)
☐ Blind Left(9)
☐ Blind Right(10)
☐ Discolor Left(11)
☐ Discolor Right(12)
☐ Contacts(13)
☐ Glasses(14)
☐ Sunglasses(15)
☐ Crossed(16)
☐ Bulging(17)
☐ Squint/Blink(18)
☐ Irregular(19)
☐ Dilated(20)
☐ Scar Left(21)
☐ Scar Right(22)
☐ Other(23)_____

Hair
Color(HAI)
☐ Black(1)
☐ Lt Brown(2)
☐ Drk Brown(3)
☐ Blond/Strawberry(4)
☐ Gray(5)
☐ Partially Gray(6)
☐ Red/Auburn(7)
☐ Sandy(8)
☐ White(9)
☐ Salt & Pepper(10)
Other(11)_____

Fiber(HRF)
☐ Wavey(1)
☐ Kinky(2)
☐ Bushy(3)
☐ Curly(4)
☐ Straight(5)
Other(6)_____

Type(HRT)
☐ Bald/Thin(1)
☐ Dye(2)
☐ Straightened(3)
☐ Wig/Toupee(4)
☐ Crew-cut(5)
☐ Streaked/Frosted(6)
☐ Afro Style(7)
☐ Short(8)
☐ Mid-neck(9)
☐ Shoulder(10)
☐ Longer than shoulder(11)
☐ Other(12)_____

(OVE

...r(FAH)
Clean Shaven(1)
Unshaven(2)
Full Beard/Goatee(3)
Mustache Heavy(4)
Mustache Thin(5)
Brows Heavy(6)
Brows Thin(7)
Side Burns Long(8)
Side Burns Short(9)
Mutton Chops(10)

Shape(FAR)
☐ Caucasian W/Negroid(1)
☐ Negroid W/Caucasian(2)
☐ High Cheek Bone(3)
☐ Hollow Cheek(4)
☐ Long(5)
☐ Broad(6)
☐ Thin(7)
☐ Round(8)
Other(9) _____

Oddities(FAO)
Mole Neck(1)
Mole Upper Lip(2)
Mole Lower Lip(3)
Lips Thick(4)
Lips Thin(5)
Chin Protruded(6)
Chin Receded(7)
Hairlip(8)
Freckles(9)
Pockmarks(10)
Discolor Lips(11)
Discolor Chin(12)
Discolor Forehead(13)
Discolor Left Cheek(14)
Discolor Right Cheek(15)
Discolor Neck(16)
Scar Left Cheek(17)
☐ Scar Right Cheek(18)
☐ Scar Chin(19)
☐ Scar Forehead(20)
☐ Scar Upper Lip(21)
☐ Scar Lower Lip(22)
☐ Scar Neck(23)
☐ Scar Face(Non Specific)(24)
☐ Tattoo Left Cheek(25)
☐ Tattoo Right Cheek(26)
☐ Tattoo Chin(27)
☐ Tattoo Forehead(28)
☐ Tattoo Neck(29)
☐ Tattoo Head(Non Specific)(30)
Tattoo Type(31) _____

...ar(ERS)
Mole Left(1)
Mole Right(2)
Deaf Left(3)
Deaf Right(4)
Discolor Left(5)
Discolor Right(6)
Hearing Aid Left(7)
Hearing Aid Right(8)
Missing Left(9)
Missing Right(10)
Cauliflower Left(11)
Cauliflower Right(12)
☐ Pierced Left(13)
☐ Pierced Right(14)
☐ Protruding(15)
☐ Large(16)
☐ Medium(17)
☐ Small(18)
☐ Scar Left(19)
☐ Scar Right(20)
☐ Tattoo Left(21)
☐ Tattoo Right(22)
Tattoo Type(23) _____

...eth(TTH)
Missing(1)
Gold(2)
Silver(3)
Broken(4)
Stain/Decay(5)
Protruding(6)
☐ Irregular(7)
☐ Bridge(8)
☐ Upper Denture(9)
☐ Lower Denture(10)
☐ Full Denture(11)
☐ Braces(12)

Artificial(ANT)
☐ Arm Left(1)
☐ Arm Right(2)
☐ Foot Left(3)
☐ Foot Right(4)
☐ Hand Left(5)
☐ Hand Right(6)
☐ Leg Left(7)
☐ Leg Right(8)
Other(9) _____

Crippled/Deformed (DFD)
☐ Arm Left(1)
☐ Arm Right(2)
☐ Fingers Left(3)
☐ Fingers Right(4)
☐ Foot Left(5)
☐ Foot Right(6)
☐ Hand Left(7)
☐ Hand Right(8)
☐ Leg Left(9)
☐ Leg Right(10)
☐ Short Left(11)
☐ Short Right Leg(12)
☐ Stump Hand(13)
☐ Extra Fingers Left(14)
☐ Extra Fingers Right(15)

Missing(AMP)
☐ Arm Left(1)
☐ Arm Right(2)
☐ Forearm Left(3)
☐ Forearm Right(4)
☐ Fingers Left(5)
☐ Fingers Right(6)
☐ Foot Left(7)
☐ Foot Right(8)
☐ Hand Left(9)
☐ Hand Right(10)
☐ Leg Left(11)
☐ Leg Right(12)
☐ Lower Leg Left(13)
☐ Lower Leg Right(14)
☐ Toe Right Foot(16)

Needle Marks(NEM)
☐ Arm Left(1)
☐ Arm Right(2)
☐ Fingers Left(3)
☐ Fingers Right(4)
☐ Hand Left(5)
☐ Hand Right(6)
☐ Leg Left(7)
☐ Leg Right(8)
☐ Wrist Left(9)
☐ Wrist Right(10)

Discolorations(DSC)
☐ Arm Left(1)
☐ Arm Right(2)
☐ Fingers Left(3)
☐ Fingers Right(4)
☐ Hand Left(5)
☐ Hand Right(6)
☐ Wrist Left(7)
☐ Wrist Right(8)

Fractures(FRC)
☐ Ankle Left(1)
☐ Ankle Right(2)
☐ Arm Left(3)
☐ Arm Right(4)
☐ Hand Left(5)
☐ Hand Right(6)
☐ Fingers Left(7)
☐ Fingers Right(8)
☐ Leg Left(9)
☐ Leg Right(10)
☐ Skull(11)
☐ Torso(12)

Pregnancy(PRG)
☐ Was(1) ☐ #(2) _____
☐ Is(3)
☐ Never(4)

Circumcized(CRC)
☐ Yes(1)
☐ No(2)

Scars(DSC)
☐ Abdomen(1)
☐ Ankle Left(2)
☐ Ankle Right(3)
☐ Arm Left(Non Specific)(4)
☐ Arm Right(Non Specific)(5)
☐ Arm Upper Left(6)
☐ Arm Upper Right(7)
☐ Back(8)
☐ Breast(9)
☐ Buttocks(10)
☐ Calf Left(11)
☐ Calf Right(12)
☐ Chest(13)
☐ Elbow Left(14)
☐ Elbow Right(15)
☐ Fingers Left(16)
☐ Fingers Right(17)
☐ Foot Left(18)
☐ Foot Right(19)
☐ Forearm Left(20)
☐ Forearm Right(21)
☐ Hand Left(22)
☐ Hand Right(23)
☐ Knee Left(24)
☐ Knee Right(25)
☐ Leg Left(Non Specific)(26)
☐ Leg Right(Non Specific)(27)
☐ Shoulder Left(28)
☐ Shoulder Right(29)
☐ Thigh Left(30)
☐ Thigh Right(31)
☐ Wrist Left(32)

Blood Type(BLT)
☐ A(1) ☐ AB(4)
☐ B(2) ☐ +(5)
☐ O(3) ☐ −(6)

Tattoos(TAT)
☐ Abdomen(1)
☐ Ankle Left(2)
☐ Ankle Right(3)
☐ Arm Left(Non Specific)(4)
☐ Arm Right(Non Specific)(5)
☐ Arm Upper Left(6)
☐ Arm Upper Right(7)
☐ Back(8)
☐ Breast(9)
☐ Buttock(10)
☐ Calf Left(11)
☐ Calf Right(12)
☐ Chest(13)
☐ Fingers Left(14)
☐ Fingers Right(15)
☐ Foot Left(16)
☐ Foot Right(17)
☐ Forearm Left(18)
☐ Forearm Right(19)
☐ Hand Left(20)
☐ Hand Right(21)
☐ Knee Left(22)
☐ Knee Right(23)
☐ Leg Left (Non Specific)(24)
☐ Leg Right (Non Specific)(25)
☐ Shoulder Left(26)
☐ Shoulder Right(27)
☐ Thigh Left(28)
☐ Thigh Right(29)
☐ Wrist Left(30)
☐ Wrist Right(31)
☐ Tattoo Type(31) _____

Breasts(BRE)
☐ Large(1)
☐ Medium(2)
☐ Small(3)

Dental Class(DNT) (Attach chart) _____

...ical Pins/Plate(MPP) _____

...iscellaneous(MIS) _____

(Attach additional information as needed)

...nature of Official Completing Form _____ Title _____ Date _____ Time _____

TO: Members, Montana County Attorney's Association
FROM: Robert L. Deschamps III, National District Attorney's Association Director
RE: Board Meeting, November 8-10, 1981

At my office's expense I attended the NDAA board of directors meeting in Reno, Nevada, on November 8-10. Although a number of items were covered, I think the following three will be of most interest to you:

Attorney General's Violent Crime Task Force Report. Earlier this year Attorney General William French Smith appointed a task force to make recommendations for a federal response to violent crime. The task force has issued its report and the NDAA has been asked to take a position on it.

The report contains 64 recommedations which are too lengthy to reproduce here, but I will send anyone copies on request. In summary, however, the report recommends enhanced federal efforts in the narcotics, gun control, arson and tax cases. It also recommends tightening the Freedom of Information Act, centralizing federal law enforcement functions, and increasing personnel for federal law enforcement agencies. It urges "preventative detention" and abolishing the exclusionary rule, as well as limiting federal habeas corpus in state cases. It also urges additional federal resources in UFAP cases, increased federal resources for training local law enforcement personnel, better exchange of criminal history information, a call to recreate something like LEAA, and several provisions for federal financial assistance for state and local corrections. Finally, the report has several recommendations regarding juvenile crime and crime victim assistance.

Most of the recommendations were approved by the NDAA board, although some, such as the gun control, federal involvement in corrections, consolidation of federal law enforcement, and federal standards for crime victim treatment were opposed or only partially approved.

Officials from the Department of Justice in attendance at the meeting made it clear that the Reagan Administration intended to implement only those recommendations which called for little or no increased funding. In fact, rather than adding federal law enforcement personnel, the administration has cut it back by 10%. Similarly, we were told anything like LEAA or federal aid for state and local jails would not be forthcoming. This stance drew an angry reaction from many of the district attorneys and prompted the drafting of a strongly worded resolution asking the President to put some money where his mouth is in the fight against crime. Unfortunately (I think) the body as a whole watered down the resolution to the extent that it was finally passed in a form that is more a request to reconsider than a demand for positive action. However, there is some feeling that if things don't change by the mid-winter director's meeting the NDAA should adopt a stronger position.

Federal Legislation. The Directors endorsed S. 4422, HR 101 and 751, limiting the exclusionary rule at the federal level; and S 1689 authorizing incarceration in federal prisons' convicts sentenced to life under the habitual criminal statutes of a state, although this endorsement is conditioned on the program being funded.

We supported in principle S. 1688 which would make it a federal offense to be a career robber or burglar and providing a mandatory life sentence. However, we could not support the present bill unless it is amended to allow federal pre-emption of a local prosecution only upon request of the local prosecutor.

We passed over S. 613, which would expand federal jurisdiction in labor disputes until we could get the viewpoints of all sides (labor and management as well as law enforcement).

A number of other bills slated for consideration were tabled due to their being withdrawn in Congress.

Drug Abuse. We were again on national TV thanks to a session with Cathy Lee Crosby of NBC and Carlton Turner from the White House to discuss drug abuse and particularly a program called "Get High on Yourself". This program was the subject of an intensive week-long campaign on NBC September 20-27, and contains a good deal of material and ideas for an innonative approach to the drug abuse problem. Of interest to prosecutors are TV Public Service Announcements that can be obtained for free that can be sponsored by yourself and your local stations. With elections coming up, it might be worthwhile to have the likes of Paul Newman, Bob Hope, Carol Burnett, etc. on your TV ads. If you're interested, contact me for more information.

CONFERENCE AGENDA

February 17-21, 1982	9th National Juvenile Justice New Orleans
March 7-12, 1982	NDAA Mid-Winter New Orleans
May, 1982	NDAA National Legislative Washington D.C.
July 16-22, 1983	NDAA Mid-Summer Boston
March, 1983	NDAA Mid-Winter Nashville
August 10 et seq., 1984	NDAA Mid-Summer San Diego-(right after Olympics)

For more information, please contact me or consult "The Prosecutor".

MISSOULA COUNTY
OFFICE OF THE ATTORNEY
MISSOULA COUNTY COURTHOUSE
MISSOULA, MONTANA 59801
TELEPHONE: (406) 721-5700

ROBERT L. DESCHAMPS III
COUNTY ATTORNEY

MEMO

TO: MEMBERS, MONTANA COUNTY ATTORNEYS ASSOCIATION
FROM: ROBERT L. DESCHAMPS III, MONTANA DIRECTOR, RLD
NATIONAL DISTRICT ATTORNEYS ASSOCIATION
DATE: MARCH 12, 1982
RE: NDAA MID-WINTER BOARD OF DIRECTORS MEETING

The NDAA Board met in New Orleans on March 7 and 11, in connection with the mid-winter conference. I attended this meeting at Missoula County expense.

You may recall that I opposed the rather expensive decision to move our headquarters to Washington D.C. However, I now feel that this move was the right choice, and am extremely pleased with the dynamic attitude of the organization, and the growing impact we are having on all branches of the federal government, primarily because of our presence in Washington.

Several items of general interest were taken up by the board in New Orleans. Of primary importance is a membership drive to be kicked off in April. Since the cut-off of federal funds, NDAA is operating with six staff people and a budget of $375,000. This is down from forty-two people and a budget in excess of two million dollars. While the staff is doing a masterful job, there is a limit. Right now we are lobbying in Washington, publishing two newsletters a month, plus a quarterly magazine, conducting several national seminars each year, improving relations with other national organizations, and providing various member services. Nevertheless, only about 4,000 of our potential 16,000 members currently belong. If NDAA is to survive on the path we've embarked on, we must enroll every prosecutor, including deputy prosecutors, possible. This recruitment effort has been placed on the state directors, so you will be hearing more from me on this subject.

A concept adopted by the board is to create sections within the organization. These sections will probably encompass fields such as civil law, juvenile justice, corrections, drugs, etc. The sections would be staffed by training coordinators from various states, and would have as their goals increased member participation, and as a result, better insurance that the association is responsive to its members' needs. I anticipate that this concept will be implemented this spring or summer.

Of particular concern is the NDAA's role and influence with the ABA. As you may know, the ABA is currently working on a complete redraft of the Code of Professional Responsibility. Some of the

concepts being considered do not bode well for prosecutors. For example, it would be unethical to bring charges which are determined to be without probable cause. Since the ABA has tremendous influence, but is dominated by private practitioners, it is imperative that prosecutors do all they can to make their voice heard. We have a few articulate spokesmen within the ABA, but is dominated by private practitioners, it is imperative that prosecutors do all they can to make their voice heard. We have a few articulate spokesmen within the ABA, but it is necessary that each of us does what we can to keep informed and let our views be known to our state ABA delegate.

In other areas, promising efforts are underway to develop a foundation funded by the private sector to assist with training. Their national organizations say that the criminal justice system isn't taking care of their needs so they're doing it themselves. However, they seem willing to put in money if programs can be devised to meet their needs.

With regard to current training, we are moving towards a complete partnership with the National College, which is becoming the training arm of the NDAA. In the sense that LEAA forced emphasis on criminal law, we are now much freer to address other areas of responsibility and you are seeing considerably more civil training being offered. In this connection, if there is a desire for training in any relevant area, let me know and I'll pass it along.

Finally, because of the tight economy, the NDAA will be offering fewer, but more intensive meetings and seminars. Accomodations will be affordable and registration kept reasonable. Two excellent programs are coming up soon, and promise to be well worth attending. The first is our National legislative conference, set for Arlington, Virginia, on May 16-19. It will feature visits to the Supreme Court, a meeting with high level staff in the White House and a reception where we can personally invite our Congressional delegation. The second is in Boston on July 18-22. The substantive portions aren't worked out yet, but it will feature a clambake, a Red Socks game, a night at the Pops, tours of Boston, etc. Plan on attending one of these outstanding conferences.

As usual, I have a great deal more I could report, so if you have any questions, comments, or ideas about the NDAA, please contact me.

DEPARTMENT OF COMMERCE

TED SCHWINDEN, GOVERNOR

1424 9TH AVENUE

STATE OF MONTANA

(406) 449-3494

HELENA, MONTANA 59620

ATTORNEY GENERAL'S OFFICE
HELENA, MONTANA
DEC 15 1981
RECEIVED

December 14, 1981

Mike Greely
Attorney General
Capitol Station
Helena, MT 59620

Dear Mr. Attorney General:

At its December 8, 1981 meeting, the Board of Medical Examiners directed me to express its concern to you regarding the unlicensed practice of midwifery. The Board has received expressions of concern from medical practitioners throughout Montana that such unlicensed practice is occurring though it is a misdemeanor under 37-8-443, MCA.

It is hoped that through your office the county attorneys in Montana may be made more mindful of this illegal and dangerous activity. The Board is aware that the Board of Nursing has authority to seek injunctive relief but is also cognizant of the fact that without the investigative expertise at the county attorneys' disposal such remedy is in reality not available.

The Board of Medical Examiners therefore respectfully requests that you, as the State of Montana's chief law enforcement officer apprise the various county attorneys by letter of the existence of this practice and remind them that in addition to being expressly illegal, it poses a very real threat to public health and safety.

Sincerely,

Daniel G. Diemert

Daniel G. Diemert
Board Attorney

cc: Board of Medical Examiners
Board of Nursing
File

"AN EQUAL OPPORTUNITY EMPLOYER"

NATIONAL COLLEGE OF DISTRICT ATTORNEYS

MASTER CALENDAR OF PROGRAMS FOR PROSECUTORS

JANUARY 1982

6 - 8	California District Attorneys Association Winter Conference	Monterey, Californi
10 - 13	Maryland State's Attorney Association Mid-Winter Conference	Champion, Pennsylva
13 - 14	Texas Prosecutor Council Law Enforcement Workshop	El Paso, Texas
24 - 27	PUBLIC CIVIL LAW PROBLEMS (NCDA)	COLORADO SPRINGS, C
27 -28	Texas Prosecutor Council Law Enforcement Workshop	Laredo, Texas

FEBRUARY 1982

7 - 11	TRIAL ADVOCACY FOR PROSECUTORS (NCDA)	SAN FRANCISCO, CALIFORNIA
17 - 21	National Council of Juvenile and Family Court Judges and National District Attorneys Association Ninth National Conference on Juvenile Justice	New Orleans, Louisi
25 - 27	California District Attorneys Association Juvenile Justice Training Seminar	Oakland, California
28 - March 4	PROSECUTION OF VIOLENT CRIME (NCDA)	ATLANTA, GEORGIA

MARCH 1982

	Texas Prosecutor Council Training Seminar	Regional Meetings to be announced
7 - 12	National District Attorneys Association Mid-Winter Conference	New Orleans, Louisi
14 - 19	PROSECUTOR'S OFFICE ADMINISTRATOR COURSE-PART II (NCDA)	HOUSTON, TEXAS

15 - 17	Kansas County & District Attorneys Association Scientific Evidence	Topeka, Kansas
25 - 26	Washington Association of Prosecuting Attorneys Spring Training Program	Spokane, Washington
28 - April 2	EXPERIENCED PROSECUTOR COURSE (NCDA)	PACIFIC GROVE, CALIFORNIA

APRIL 1982

4 - 8	INVESTIGATION AND PROSECUTION--THE PROSECUTOR's DUAL ROLE	BOSTON, MASSACHUSETTS
18 - 21	PROSECUTION OF ARSON CASES (NCDA)	PHILADELPHIA, PENNSYLVANIA

MAY 1982

	National District Attorneys Association National Legislative Conference	Washington, D.C.
16 - 21	PROSECUTOR'S OFFICE ADMINISTRATOR COURSE- PART I (NCDA)	HOUSTON, TEXAS
26 - 29	Mississippi Prosecutors College Spring Conference	Memphis, Tennessee

JUNE 1982

4 - 11	EXECUTIVE PROSECUTOR COURSE (NCDA)	HOUSTON, TEXAS
6 - 10	Iowa Prosecuting Attorneys Training Coordinator Council and Iowa County Attorneys Association County Attorney Spring Training Conference	Arnolds Park, Iowa
16 - 22	National District Attorneys Association Summer Conference	Boston, Massachusetts
23 - 26	Maryland State's Attorney Association Summer Conference	Ocean City, Maryland
24 - 25	Washington Association of Prosecuting Attorneys Summer Conference	Lake Chelan, Washington
25 - July 9	CAREER PROSECUTOR COURSE (NCDA)	HOUSTON, TEXAS

JULY 1982

	National District Attorneys Association 1982 Summer Conference	Boston, Massachusetts

14 - 15	Alabama District Attorneys Association	Huntsville, Alabama
	AUGUST 1982	
	New York Bureau of Prosecution and Defenses Services Basic Course for Prosecutors VII	To be announced
	SEPTEMBER 1982	
12 - 16	PROSECUTOR & THE JUVENILE & FAMILY COURT (NCDA)	RENO, NEVADA
20 - 24	Oregon District Attorneys Association Summer Institute	Marylhurst, Oregon
	OCTOBER 1982	
	Texas Prosecutor Council Training Seminar	Regional Meetings
5 - 8	Washington Association of Prosecuting Attorneys Fall Meeting	Pasco, Washington
6 - 9	TRIAL ADVOCACY FOR PROSECUTORS (NCDA)	CHICAGO, ILLINOIS
24 - 28	PUBLIC CIVIL LAW PROBLEMS (NCDA)	KNOXVILLE, TENNESSEE
	NOVEMBER 1982	
7 - 10	PROSECUTION OF VIOLENT CRIME (NCDA)	COLORADO SPRINGS, COLORADO
17 - 20	TRIAL ADVOCACY FOR PROSECUTORS (NCDA)	ORLANDO, FLORIDA
29 - Dec 3	PROSECUTOR'S INVESTIGATORS SCHOOL (NCDA)	HUNTSVILLE, TEXAS
	DECEMBER 1982	
	Oregon District Attorneys Association Winter Conference	To be announced
4 - 5	Washington Association of Prosecuting Attorneys Winter Meeting	Seattle, Washington

	JANUARY 1983	
10 - 14	APPLIED TRIAL TECHNIQUES (NCDA)	HOUSTON, TEXAS
	FEBRUARY 1983	
8 - 12	PROSECUTOR'S OFFICE ADMINISTRATOR COURSE (NCDA)	ATLANTA, GEORGIA
22 - 26	EXPERIENCED PROSECUTOR COURSE (NCDA)	MYRTLE BEACH, SOUTH CAROLINA
	MARCH 1983	
6 - 11	National District Attorneys Association Mid-Winter Conference	Reno, Nevada
9 - 12	PROSECUTION & INVESTIGATION-- THE PROSECUTOR'S DUAL ROLE (NCDA)	WASHINGTON, D.C.
	APRIL 1983	
5 - 9	PUBLIC CIVIL LAW PROBLEMS (NCDA)	RENO, NEVADA
18 - 21	TRIAL ADVOCACY FOR PROSECUTORS (NCDA)	PHOENIX, ARIZONA
	MAY 1983	
4 - 7	PROSECUTOR'S OFFICE ADMINISTRATOR COURSE (NCDA)	SAN ANTONIO, TEXAS
	JUNE 1983	
3 - 10	EXECUTIVE PROSECUTOR COURSE (NCDA)	HOUSTON, TEXAS
	JULY 1983	
8 - 22	CAREER PROSECUTOR COURSE (NCDA)	HOUSTON, TEXAS
	AUGUST 1983	
14 - 18	National District Attorneys Association Summer Conference	Nashville, Tennessee

Calendar Items Should Be Sent To Director Of Training NCDA College of Law University of Houston Houston, Texas 77004

A COOPERATIVE PROJECT OF NAPC-NCDA

STATE
OF
MONTANA

ATTORNEY GENERAL
MIKE GREELY

STATE CAPITOL BUILDING, HELENA, MONTANA 59601 TELEPHONE (406) 449-2026

23 December 1981

Willis McKeon, Esq.
Phillips County Attorney
Box 40
Malta, Montana 59538

Re: State v. Gary Lee Smith; Dismissal Of Third DWI Charge Due To Denial Of Counsel During Prosecution For Second DWI Offense

Dear Mr. McKeon:

You have asked whether an information charging a third DWI offense within five years is subject to dismissal under the authority of Baldasar v. Illinois, ___ U.S. ___, 100 S.Ct. 1585 (1980) where an indigent defendant was denied court-appointed counsel during prosecution leading to his second conviction for DWI.

In a per curiam decision, the United States Supreme Court in Baldasar held that a prior uncounseled misdemeanor conviction could not be used under an enhanced penalty statute to sentence the defendant to an increased term of imprisonment upon conviction of a subsequent offense. In so holding, the court relied on Argersinger v. Hamlin, 407 U.S. 25, 37 (1972) and Scott v. Illinois, 440 U.S. 367, 373-74 (1979), which established the rule that an indigent defendant charged with any criminal offense may not be sentenced to a term of imprisonment unless the State has afforded him the right to assistance of appointed counsel in his defense. In Baldasar, the Court held, in effect, that a rule which invalidated a conviction for imposing a prison term directly, but upheld a conviction for imposing imprisonment collaterally "would be an illogical and unworkable deviation" from established case law. 100 S.Ct. at 1589 (Marshall, J., concurring).

In the present case, the accused was convicted of a second offense of DWI on March 25, 1981, and was sentenced solely to payment of a fine. Prior to trial, the court had denied his request for court-appointed counsel. Defendant was later charged by information in district court with a third offense of DWI. Conviction of a third DWI offense within five years of the first offense carries a mandatory sentence of imprisonment. § 61-8-714(3), MCA. But for the second

conviction, defendant would not be subject to a mandatory jail sentence of between 30 days and one year upon conviction for a third DWI offense. In other words, the second DWI conviction serves to enhance the penalty imposed upon the third conviction for DWI. Baldasar would, therefore, seem to bar prosecution of the defendant, in the instant case, for a third offense of DWI.

The information charging defendant with a third offense of DWI must be dismissed (1) because conviction would necessarily result in imprisonment in violation of the Supreme Court's holding in Baldasar, and (2) because the district court lacks jurisdiction over all but third DWI charges (see § 3-5-302, MCA). Furthermore, dismissal bars refiling in justice court. See § 46-13-201(3), MCA.

It should be noted that the 1981 Legislature also enacted mandatory jail sentences following conviction for first and second DWI offenses. § 61-8-714(1), (2), MCA. Taken together, Montana's mandatory DWI sentences and the Supreme Court's decision in Baldasar, Scott and Argersinger require that counsel be provided to all DWI defendants who are not financially able to hire an attorney and who do not knowingly and intelligently waive their right to counsel.

If I can be of further assistance, please do not hesitate to contact me.

Very truly yours,

STEVE JOHNSON
Assistant Attorney General

cc: Marc Racicot